United Nations A/HRC/25/NGO/46

General Assembly

Distr.: General
25 February 2014

English only

Human Rights Council
Twenty-fifth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-11194
1411194

Please recycle

India: Remedies to human rights violations a mirage

1. India has one of the most commended and emulated legal systems in Asia. The jurisprudence developed by the country's courts is model to developing and advanced jurisdictions alike in interpreting state responsibility on safeguard human rights guarantees. The judiciary in India enjoys a unique position, shared with only three other jurisdictions in Asia - Japan, Hong Kong and South Korea - concerning independence and absolute non-interference by the executive and by other powerful organs of the state, including the armed forces.

2. Yet, India is one of the least performers in the world when it comes to realisation of fundamental human rights guarantees to all its citizens, irrespective of their economic, religious and social status. The country performs poorly by comparison to rest of the world democracies, concerning the actualisation of remedies to human rights abuses.

3. One of the most serious concerns affecting the realisation of adequate and effective remedies to human rights abuses to victims is the enormous delay in adjudications. A litigation to complete in India could take often more than a decade. According to a statement made by the Prime Minister of India in the Lok Sabha in 2010, India has the largest backlog of cases in the world. This situation has not improved, since today, the country has an estimated 30 million cases pending disposal. Of this a substantial number of cases are more than a decade old. An estimated four million cases are pending before the country's High Courts and the Supreme Court itself has an estimated 65,000 cases pending before it.

4. In 2008 the Government of India set itself the target of having 50 serving judges per million people by 2013. However in 2012, when it became clear that India was far short of this goal, a less ambitious 5-year plan was announced: a doubling of the number of judges in "subordinate" courts (excluding High Courts and the Supreme Court). India's current ratio stands at less than 15 judges per million, and even if the new target were achieved, India would still be nowhere near to the United States, for example, where there are over 100 judges per million.

5. The Union Minister for Law and Justice, Mr. Kapil Sibal, while assuming office in 2013, promised radical changes to end this impasse. However, the unaddressed huge backlog of cases poses what Mr. Sibal's immediate predecessor in office stated, a "threat to constitutional democracy" that challenges the rule of law framework which has "failed to guarantee order and stability in society".

6. Delays in adjudication alone is not what that threatens rights to remedies for human rights abuses. Refusing to register complaints is the defining character of India's criminal justice system. This practice received the maximum and deserving bad press perhaps in 2013 when it was repeatedly revealed, that in many cases of sexual abuse against women including in cases of rape, the police have refused to register complaints. So much so, the most recent amendment to the criminal law in India, made effective through the Criminal Law (Amendment) Act, 2013, promulgated on 2 April 2013 incorporated a new Section to the Indian Penal Code, 1860, Section 166 A, that makes it a punishable offense for a public servant, to fail to register cases of sexual abuse against women.

7. Yet the fact that the implementation of this provision is least followed is proved through subsequent cases reported from India, where once again the police were accused and later proved of having failed to register cases after receiving credible complaints of sexual abuses against women. So far, not a single police officer in India who has contravened this provision of law has been charged with a crime punishable under this section or placed on trial.

8. In addition, crimes committed by the armed forces of the Union, particularly the detachments of the Indian Army or one of its many para-military units are excluded from being registered as crimes by the local police. In places where the notorious Armed Forces (Special Powers) Act, 1958 is in operation, the law provides statutory impunity to the armed forces from prosecution of crimes. In states like Jammu and Kashmir, and Manipur, where the armed forces deployed in these areas commit criminal offences with impunity in large numbers, including rape of women and extrajudicial execution of civilians, there has been no prosecutions so far of the armed forces in a civilian court. Neither has there been any commendable increase in the number of cases registered against members of the armed forces, even if the offence is of that nature covered under Section 166 A of the Penal Code.

9. The uniformed forces of the state commit a substantial number of human rights violations reported from India. This includes offences committed by the local police and the armed forces of the Union, of varying nature and gravity, including custodial rape, torture and extrajudicial executions. The fact that there is no independent crime-investigating agency in India, places the responsibility of investigating such crimes with the same agency negating the premises of independence and honesty in investigations.

10. Henceforth, even though offences like custodial rape, torture and extrajudicial executions in India is at an alarmingly high rate, there are hardly any cases registered against the members of these state agencies. Substantive impunity that has led to deep-rooted demoralisation and has fuelled corruption at all levels is the hallmark of the country's crime investigation agencies.

11. India today also lacks a legislation that provides witness protection. Threatening and intimidating of witnesses particularly in cases where the victims are pursuing a criminal complaint against a state agent, like a police officer is common in India.

12. Often the Public Prosecutor, who appears for the victim in a criminal case joins forces with the prosecuted state agent, thereby undermining the security of the victim as well as the witnesses in the case. Additionally, the office of the Public Prosecutor, is one of the most corrupt and inept institutions in the entire criminal justice administration setup in the country that is least spoken about or investigated so far.

13. India also lacks a legal and normative framework that sets universally acceptable standards for punitive and monetary compensation in cases where financial compensations are awarded for human rights abuses. Monetary compensation awarded for a human rights violation varies wildly between jurisdictions. For example if a civil litigation for compensation in a case of custodial torture fetches an award of Rupees one million in one state, the award may be as less as Rupees 25,000 in another case, tried and adjudicated in another jurisdiction under similar circumstances. The Supreme Court of India has so far refused to lay down any yardsticks for its lower courts while adjudicating similar claims. The payment of paltry compensation, as low as, sometimes a few thousand rupees serves as one of the most disheartening as well as discouraging factors for victims to approach the court seeking compensation for human rights abuses. Additionally the costs of the litigation far exceed the award, often ten to twenty times of the compensation awarded.

14. Due to the foregoing reasons, victims of human rights abuses face an exceptionally uphill task when they chose to pursue legal remedies against their cause. This situation stands in stark contrast to India's domestic as well as international human rights commitments. It negates each one of India's voluntary pledges to the Human Rights Council.

15. Therefore the Asian Legal Resource Centre (ALRC) request the Council to:

a. Urge India to take immediate steps to curb inordinate delays in adjudications, and;

b. Recommend that India undertakes a substantial review of its criminal justice framework that adequate and immediate changes are made to, most importantly its investigative framework, that it meets the requirements of fast advancing democracy.

United Nations A/HRC/25/NGO/47

General Assembly

Distr.: General
25 February 2014

English only

Human Rights Council
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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Friends World Committee for Consultation, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

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GE.14-11196
1411196

Please recycle

The right to food and its relation to trade and investment rules

The Quaker United Nations Office (QUNO), which undertakes the work at the United Nations on behalf of the Friends World Committee for Consultation (Quakers) would like to draw attention to the final report[1] of the UN Special Rapporteur on the Right to Food to the Human Rights Council. In this report, the Special Rapporteur calls for greater coordination to be actioned, at multilateral, regional and national level, to create an enabling international environment for achieving the right to food.

Within the report, there is a call for the design of a new framework for trade and investment in agriculture as a step towards achieving the right to food. The Special Rapporteur notes that, although the "equation" to achieving a new paradigm of such is complex, "it is one that can be solved".[2]

Preceding this, the Special Rapporteur, on the eve of the high-level WTO summit in Bali, Indonesia in December 2013 stated that "Supporting local food production is the first building block on the road to realizing the right to food, and trade must complement local production, not justify its abandonment".[3]

It is good that the Bali summit reached some agreement regarding the freedom to use food reserves to help secure the right to food. Nevertheless, this action is insufficient to secure the right to food. Greater attention needs to be paid to the purpose, structure and direction of the governance of trade and investment in agriculture. To do this, QUNO is stepping back from the current international negotiations relating to trade and investment in agriculture and asking questions about what an ideal framework to govern trade and investment in agriculture should look like.[4]

The current multilateral framework governing international agricultural trade was designed a quarter of a century ago, as part of the World Trade Organization (WTO). As a result, it defines rules for the most prevalent problems of the late 1980s and early 1990s. It proposes solutions based on analysis of the situation at that time and assumptions about how agricultural production, trade and investment would evolve.

Since 2007 however, the situation on world markets for agricultural goods has changed dramatically. International cereal prices have spiked three times in the past five years, and they remain both volatile and high by recent standards. Observers expect volatility to be a continuing feature of food prices in the short to medium term. Alongside this are concerns surrounding the effects of climate change, the marked increase in domestic and foreign investment in agricultural land, mandatory biofuel targets, changing consumption patterns, and market deregulation.

Although the WTO has a multilateral agreement on investment (Agreement on Trade-Related Investment Measures, or TRIMS), there are few binding rules to guide international investment. There has also been less engagement by civil society on the question of investment in agriculture. There has been no agreement among governments on how to establish binding rules in this area that would protect public interests. This has created a poorly regulated space, which some investors have exploited at the expense of communities living in some of the world's poorest countries. More broadly, investment in new agricultural productive capacity, and in food processing and distribution systems, has grown significantly in some parts of the world over the past 10 years, in a context of increasingly deregulated capital flows. The results both reflect and have contributed to a shift in where food is grown and where it is consumed, as well as in what commodities are produced.

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[1] De Schutter (2014) Final: Report of the Special Rapporteur on the right to food: *The transformative potential of the right to food.* A/HRC/25/57

[2] De Schutter (2014) Final: Report of the Special Rapporteur on the right to food: *The transformative potential of the right to food.* A/HRC/25/57, para.29

[3] http://www.srfood.org/en/bali-package-must-allow-ambitious-food-security-policies-un-expert-on-wto-summit

[4] Detailed information on the work can be found at: http://www.quno.org/areas-of-work/agricultural-trade-and-investment;

Many observers argue that the export-oriented nature of the WTO Agreement on Agriculture (AoA), and its objective of increasing trade in agricultural products, was too one-sided. They argue that the AoA ignores the fact that agriculture is not only a complex area of policy, but also provides a basis for food security, livelihoods, employment and development in ways that often escape monetary quantification. Others question the existing rules from a trade perspective.

Many economists, politicians, NGOs and trade diplomats agree that WTO and other international rules relating to trade and investment in agriculture are in need of a fresh examination.[5] This provides an opportunity for governments and civil society to think anew about what the global governance of trade and investment in agriculture should look like.

The time is ripe that, through sharing expertise and experience, we can jointly consider what is needed in rules for trade and investment in agriculture if the Right to Food is one of the objectives.

Some level of agricultural trade makes sense yet something as fundamental as food should not be treated as just another commodity.

By placing people's human rights and dignity alongside sustainability and food security as the central objectives of agricultural trade, it is possible to conceive a framework of rules governing trade and investment in agriculture.

The framework must be adaptable to the evolving complexities of the world today and in the future, a framework that recognizes the importance of global institutions such as the Committee on Food Security,[6] as well as other levels of governance, whether regional, national or sub-national.

The multilateral framework is a potentially valuable context for developing, implementing and administering a set of principles and rules for trade and investment in agriculture. A new framework should uphold the right to food and give a voice to the world's most vulnerable and marginalized inhabitants.

It is possible to significantly improve the ability of all people, at all times, to have physical, social and economic access to sufficient, safe, culturally appropriate and nutritious food that meets their dietary needs and food preferences for active and healthy lives. This is achievable in a way that is sustainable and that respects people, their culture and their environment. Trade and investment should be recognized as two of many tools to this end. They are not ends in themselves.

Friends World Committee for Consultation (Quakers) calls on the Human Rights Council to:

- Pay more attention to the inter-linkages between trade and investment rules (including intellectual property rules) and the right to food;

- Encourage the design of alternative approaches to trade and investment rules with people, sustainability and food at the centre and where trade and investment rules are considered as one potential tool to achieve the right to food; and to

- Encourage the creation of an enabling international legal environment that supports domestic efforts towards the realization of the right to food.

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[5] This is borne out, inter alia, by a survey that QUNO undertook in 2013. The results and analysis of the survey will be available at www.quno.org in March 2014.

[6] http://www.fao.org/cfs/cfs-home/en/

United Nations A/HRC/25/NGO/48

General Assembly

Distr.: General
6 March 2014

English only

Human Rights Council
Twenty-fifth session
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by the Organization for Defending Victims of Violence, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-11822
1411822

Please recycle

Strengthening the Role of Victims of Terrorism in Countering Terrorism&*

Terrorism is an organized threat; a sever type of extremism and global radicalism. Terrorism has left many people dead and wounded in every country of the world. The threat of terrorist attacks is permanent, global and widespread.

Terrorism also imposes destructive impacts on the societies. By instilling horror and fright, terrorist groups deprive the societies from their primary rights, peace and security. Terrorism severely endangers the human rights, threats democracy and challenges the first demands of the people for enjoying a life free from any sense of fear. Therefore, we are facing a dire threat which applies modern tools in the worst form.

Our world still suffers casualties. The numbers of victims are increasing. Tens of thousands of civilians are killed in terrorist attacks specifically in Iraq, Pakistan, Afghanistan, Yemen, Somalia, Nigeria, Thailand, Russia, Philippines, Lebanon, Syria, India, Iran, France, Norway, Sweden and the United States of America. Just during the recent months of 2013, terrorist attacks have sharply risen in Iraq and thousands of civilians are targeted in terrorist operations, causing a climate of intimidation and dread.

The policies adopted for fighting against terrorism appear to be ineffective instruments. These debilitations aggravate a feeling of frustration.

Many national laws and international resolutions have been ratified on the condemnation of terrorism and a lot of international institutions are established for the implementation of these regulations. But considering the deplorable events we are witnessing, it seems that there is a long way to the real implementation of such instruments.

Terrorist attacks have spread their impacts on the societies and on the life of the victims. Therefore, the commitments of international organizations, the collaboration of states and finally the contribution of the civil societies would be necessary for fighting against terrorist organizations and controlling the impacts of terror.

For protecting the primary rights of the people in the face of this borderless and lawless war and safeguarding the heritage of human civilization, a new solution must be worked out.

Terrorism victims, more than anyone else, are familiar with the concept of fear and horror and the impacts of terror on the society. Despite sustaining the gravest damages, they have taken appreciable steps for fighting against terrorism and realization of the aspiration of a 'world without terrorism'. Some of these steps would be:

Redefining an active role for victims of terrorism in counterterrorism measures; Up to now, significant conferences are held on the issues of protecting and observing the rights of the victims; however, there has never been the fair position for the victims to take their role as the main stakeholders. One of such conferences is The Global Counterterrorism Forum (GCTF) which has held three sessions in the United States of America, Turkey and the United Arab Emirates. But terrorism victims don't want to keep silent and merely attract international support for assisting victims of terrorism- the utmost measure, so far, carried out for victims in such conferences. The reality is that the concern of the victims is something beyond just being ignored. Victims of terrorism want to assume an active role as a part of civil society in suppressing terrorism.

International coordination: In this regard, Association for Defending Victims of Terrorism calls for the consideration of this issue and consolidation of the connections between associations and ngos of victims with special working groups and entities of the United Nations including *Counter-Terrorism Implementation Task Force (CTITF), Working Group on Supporting and Highlighting Victims of Terrorism, Counterterrorism Committee (CTC)* and the *Counter-Terrorism Executive Directorate (CTED).* Such an interaction can resolve the problem of lack of coordination in the activities focused on fighting against terrorism at national and international levels and develop a prevailing consensus between all involved parties.

Promoting human rights within countries: in the light of acknowledging and stressing on the role of nongovernmental organizations, not only the promotion of human rights and decreasing violence would be feasible but also adoption of military approach and resort to hard power would also be minimized to a considerable extent.

Mr. Ben Emmerson, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in his report of August 18, 2011, emphasized on the necessity of considering and recognizing the pain and suffering of the victims of terrorist acts in adoption of a permanent comprehensive strategy for fighting against terrorism. As the UN Special Rapporteur, he has pledged to promote the rights of the victims of terrorism and stressed on the responsibilities of the states before victims.

In line with international resolutions, Association for Defending Victims of Terrorism asserts that terrorism is strongly condemned in any form, in any way, committed by anyone and it is a serious threat against the peace and security of the world.

Emphasizing on the point that no reason could justify the use of terrorist acts, it should be acknowledged that various elements are determining in the eruption of acts of terrorism; denying the right to life and security are among the most important causes. On this basis, our Association has focused its activities on elucidating this aspect of the issue along with highlighting the voices of the survivors and families of the victims via giving them the opportunity to present themselves in the media and holding workshops for them. ADVT also makes its best efforts to open a new window for showing the impacts of terrorism and its everlasting consequences like fear, anxiety and stress, on the families. The voice of these victims can also be helpful for foiling the recruiting activities of terrorist groups and public mobilization for fighting against terrorism.

Reinforcing a global network of victims of terrorism; One of the obstacles before civil society's effective interaction in counterterrorism measures is the lack of coordination among counterterrorism strategies at local, national and international levels. Accordingly, Association for Defending Victim of Terrorism calls for the establishment of a global network of victims of terrorism in order to achieve an international consensus on the manifest human rights principle of the right to life.

The necessity of adopting a collaborative approach: in the resolution 13/26, the Human Rights Council "deeply deplored suffering caused by terrorism to the victims and their families and expresses its profound solidarity with them, and stressed the importance of providing them with proper assistance". Accordingly, Association for Defending Victims of Terrorism also calls for the recognition of the outstanding role of the survivors and victims of terrorism in countering terrorism. Supporting networks of victims, who are not looking for revenge but rather, in the face of violent radical ideologies, speak bravely about a world free from terrorism; recognition of the significant role of the NGOs in protecting victims and collaboration in the global strategy for fighting against terrorist acts are among other demands of ADVT.

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* The Institute for Scientific and Political Research without consultative status, also shares the views expressed in this statement.

United Nations A/HRC/25/NGO/49

General Assembly

Distr.: General
25 February 2014

English only

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GE.14-11253

1411253

Please recycle

Indonesia: For justice to be more accessible to victims, an anti-torture law is needed*

1. The Asian Legal Resource Centre (ALRC) and Padang Legal Aid Institute (LBH Padang) wish to bring the attention of the Human Rights Council (HRC) to the matter of Indonesia's urgent need to adopt a separate anti-torture law. Both organisations welcomed consideration of the issue of torture during the HRC's 25th session and the significant work of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We expect the Indonesian government to extend its cooperation to the Rapporteur's mandates by inviting him to conduct a follow-up visit to the country.

2. Indonesia has been a state party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) for almost 16 years. Its Constitution firmly establishes that freedom from torture is a basic right which should not be limited in any circumstances. Such provision can also be found in a number of other legislations – including Laws No. 39 Year 1999 on Human Rights, No. 26 Year 2000 on Human Rights Court, and No. 12 Year 2005 on the Ratification of the International Covenant on Civil and Political Rights. However, as rightly pointed out by the Special Rapporteur in his last report after visiting Indonesia, those legislations do not provide effective mechanisms to prevent and punish the practice of torture. Although the Human Rights law provides a definition of torture, it does not establish an effective individual complaint mechanism. The Indonesian human rights court's jurisdiction to examine torture cases is limited to those perpetrated in the context of genocide or crimes against humanity.

3. The continuous failure of Indonesia to establish an effective prevention and punishment mechanism is evidenced by the absence of a criminal provision prohibiting torture. This amounts to a violation of Article 2 of CAT and disrespects the Special Rapporteur's recommendations in his 2007 report. Criminal trial on torture cases in Indonesia, therefore, has so far been based on general criminal provisions under the Penal Code. They are notably Articles 351-358 on maltreatment, which elements are not in accordance with the torture definition provided by the Convention.

4. Article 351 (1) of the Penal Code concerning maltreatment, for instance, was used for charging and convicting three police officers in the *Sijunjung* case. In this case, the victims – who were two under-aged brothers named Faisal and Budri – were found dead, hanging in the toilet of the Sijunjung sub-district police station in 2011. After being held for almost a week in the police station their bodies showed various wounds and bruises. Similar criminal provision was charged to four police officers responsible for torturing Erik Alamsyah to death in 2011 and two police officers who were involved in the torture and shooting of 23-year old Yusli in Tangerang. Recently in February 2014, two prison guards of the Solok Correctional Facility beat up and electrocuted an inmate, Riko Yeyandra. They were also indicted under the article on maltreatment. In accordance with the Committee against Torture's General Comment No. 2, the ALRC and LBH Padang are of the opinion that the prosecution, indictment and conviction of perpetrators based on the maltreatment article in these cases are contrary to Indonesia's obligations under the anti-torture convention.

5. The ALRC and LBH Padang noted the Indonesian government's plan to prohibit torture in its draft revision to the Penal Code (RKUHP). However, the unreasonably long revision process has led both organisations to question the plan's suitability to address such an urgent problem as torture. More importantly, the ALRC and LBH Padang doubt that a single criminal provision prohibiting torture under the Penal Code alone will increase the accessibility of justice for victims and their families. More than merely penalising torture, the ALRC and LBH Padang firmly believe that a special criminal procedure on torture is equally important but also needs to be regulated.

6. One of torture's special features which distinguish it from other crimes is that such abuse is, by definition, perpetrated by state officials. This feature makes the general provisions under the Criminal Procedure Code ineffective when they are used for investigating torture cases and for prosecuting, trying and convicting perpetrators. Lodging a criminal complaint with the police under the Criminal Procedure Code might work for other cases but not for torture – an abuse which, in Indonesia, is practised mostly by the police. The ALRC and LBH Padang note that the police hardly follow up complaints on torture except in extraordinary circumstances, such as when the victim is dead and/or if there is a strong public demand for an investigation. Yet even in such cases, the investigation conducted typically tends to protect the perpetrators. They do this by selectively picking the charges and limiting the number of the accused, as evidenced in the *Sijunjung* case.

7. *The Sijunjung* case was 'investigated' by the police for almost a year. Despite the death of the victims in this case, the police refused to charge the accused officers with murder (Article 338 of the Penal Code) or maltreatment resulting in death (Article 351 (3)). The tendency by the Police to protect the perpetrators was also apparent from the fact that there were only four officers brought to court. This was eight less than the total number of officers disciplined internally due to their involvement in torturing the two under-aged brothers.

8. Indonesian Criminal Procedure Code imposes the burden of proof on the prosecutor. It requires at least two categories of legitimate evidence for an accused to be convicted. In practice, witnesses' testimonies are essential in concluding guilt. In ordinary criminal cases, such provisions are meant to ensure that innocent people are not wrongly convicted and sentenced. In torture cases, however, such provisions are excessively burdensome for the prosecutors and make torture too difficult to prove. As an example, in the *Sijunjung* case, the prosecutor was struggling to prove that the victims had not committed suicide but were hung by police officers. Eventually, the District Court eventually ruled that the officers were not responsible for the death of the victims. The reason cited was the absence of witnesses' testimonies, despite the obvious fact that no non-police officers would be able to witness the crime as it took place in a police station.

9. An anti-torture law is furthermore needed, because the existing laws in Indonesia – including the Criminal Procedure Code and its draft revision – have failed. No clear procedures were provided for the judges on measures to be taken when a torture claim is made by an accused in a criminal case. Due to this vacuum in procedures, judges tend to overlook such claims and dismiss them without proper examination, as in the recent case of *Six Street Singers* in Jakarta. In this case, six street singers – four of them minors – were charged and tried for murder. The ALRC has received information from the Jakarta Legal Aid Institute (LBH Jakarta), that the charges were fabricated. There were reports indicating that, during the investigation of the six singers by officers of the Jakarta Metropolitan Police, they were beaten, blindfolded, electrocuted and forced to confess to murder.

10. During the trial, the street singers retracted their statement made under police coercion and claimed they were subjected to torture. The judges responded by summoning two officers who had nothing to do with the alleged torture. They concluded that torture had not taken place. They dismissed the singers' claim after merely asking them whether the summoned officers were the ones who tortured them. Four of the under-aged singers were found guilty and sentenced to three to four years of imprisonment, whereas the rest were given seven year prison sentences. Their torture complaint before the court of law did not lead to any criminal investigation.

11. The enactment of an anti-torture law can be used as a means to revise the existing law and regulations regarding monetary compensation for victims of torture and their families. Although there are several provisions on monetary compensation for victims of human rights violations under Law No. 13 Year 2006 concerning Witnesses and Victims Protection and Government Regulation No. 44 Year 2008, many of them are not in accordance with international standards. Among others, the existing laws and regulations established that compensation given to the victims should only cover pecuniary damage. They also imposed onerous requirements for the victims and their families by asking them to provide receipts, giving the impression that the payment is more cost reimbursement than compensation. In the *Erik Alamsyah* case, the family's request for compensation was dismissed due to the failure to provide receipts for the court.

12. There is a lack of clarity under the existing laws and regulations on the compensation mechanism for torture victims. This forces the judges to examine compensation requests based on their own interpretation that may not be in accordance with international human rights standards. In the *Sijunjung* case, for example, the judges refused the family's compensation request as it was not proven that they died from torture. The judges therefore interpreted that compensation could be given to the family only if the victims had died from torture, running contrary to General Comment No. 3 of the Committee against Torture.

13. Given the above arguments, the ALRC and LBH Padang are calling for the HRC to intervene to urge the Indonesian government to:

a. Comply with its international obligations under the anti-torture convention, *inter alia,* by enacting a separate, comprehensive law on anti-torture. The law should declare torture as a crime punishable with proportionate penalties. It should also provide effective mechanisms to prevent and punish torture so justice is more

accessible to victims and their families. The enactment of the law should be seen by the government as a chance to revise existing laws or legal provisions concerning compensation for torture victims which are not in accordance with international human rights standards;

b. Invite the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to conduct an official visit to Indonesia. This visit should assess the current situation in the country as well as the government's compliance with the recommendations made by the Rapporteur in his 2007 visit.

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*The Padang Legal Aid Institute (LBH Padang) Indonesia, NGO(s) without consultative status, also share the views expressed in this statement.

United Nations A/HRC/25/NGO/50

General Assembly

Distr.: General
6 March 2014

English only

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GE.14-11831
1411831

Please recycle

The necessity of being obligated to international resolutions for confining acts of terrorist groups*

Many national laws and international resolutions have been ratified on the condemnation of terrorism; a lot of international institutions have been established for implementation of these regulations and various types of measures have been carried out in national and international levels for countering terrorism and confining the activities of terrorist groups. One of these instruments is the *Resolution 60/288* of the UN General Assembly which emphasizes that the UN Member States have to take appropriate measures, before granting asylum, for the purpose of ensuring that the asylum-seeker has not engaged in terrorist activities. Observing this provision can not only control the activities of terrorist groups, but also can contribute in safeguarding the rights of victims of terrorism.

In countering terrorism, we need to take a multilateral view; a kind of approach which on one hand obliges us to counter terrorism and on the other hand makes us committed to the preservation of the dignity of the victims of terrorism. For fighting against terrorism and controlling its impacts and destructive consequences, a global consensus is required. Pledging to this Resolution, the UN Member States not only can take a major step in ensuring the security of their citizens but also they would observe the rights of the people targeted in terrorist attempts.

On this basis, owing to its concrete understanding and knowledge of terrorist groups, Association for Defending Victims of Terrorism, calls on all UN Member States to guarantee the security of their citizens by observing the provisions of this Resolution and do not make their countries a safe haven for terrorists.

ADVT expresses its members' concern by posing the question that whether Albania and Germany have taken this Resolution into account while accepting members of the terrorist group of Mojahedin-e Khalq (MEK)? What would guarantee that the resettlement of MEK members in Germany will not be a threat against German citizens? How could the governments of Germany and Albania ensure Iranian victims of the terrorist acts of MEK, that these countries will not turn to a base for terrorist measures of this group? It is worth mentioning that the terrorist attacks of the MEK (MKO), during the past three decades, have taken the lives of thousands of people; Iranian, Iraqi and American victims have been killed in the terrorist attempts of MEK against public places and the offices of British, American and Dutch companies in Iran.

Association for Defending Victims of Terrorism calls on all UN Member States to consider the following three conditions in examining the requests of members of this group for having refugee status, in order to provide the required guarantee for the safety and security of their citizens and observing the rights of victims:

- **Leaving the governing structure over terrorist organization;** the dominant cultic structure of this group is a potential threat for committing violent terrorist acts.
- **Expressing regret for the past violent acts;** this is the minimum request for preserving the status and dignity of the victims of terrorism.
- **Exiting the dominance of the guiding ideology;** this group used to justify its conduct based on a belligerent ideology and today the same ideology is still being embraced on their agenda.

Setting out these conditions we could pin our hope on the limitation of violence and extremism.

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* The House of Eternal Culture without consultative status, also shares the views expressed in this statement.

United Nations A/HRC/25/NGO/51

General Assembly

Distr.: General
25 February 2014

English and French only

Human Rights Council
Twenty-fifth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by France Libertes: Fondation Danielle Mitterrand, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-11264

1411264

Please recycle

The human rights situation of the Saharawi youth

In 1991, the UN sent a peacekeeping mission - MINURSO - to the non-self-governing territory of Western Sahara with the mandate to organize and implement a referendum of self-determination on the destiny of the territory. This intervention of the UN came after 16 years of armed struggle between Morocco and the Saharawi liberation movement, the POLISARIO Front.

Now, 23 years later, this promise remains unfulfilled, political attempts to find a solution has been without success, and the status of the non-self-governing territory of Western Sahara remains unresolved. As a result, the Saharawi youth are today divided into three groups: some are in refugee camps in southwest Algeria; some are living in the non-self-governing territory of Western Sahara, and some in the diaspora. The Saharawi youth form a large and important part of the Saharawi society, making the challenges they face an essential and critical consideration when talking about the Western Sahara conflict.

The majority of the Saharawi youth was born and has grown up in exile – away from their homeland. This new generation of exiled Saharawis has lived their whole life with the promise of one day returning home through a referendum of self-determination. Decades later, this still-unfulfilled promise is leaving them with a sense of disappointment and defeat.

Given their location in the midst of the Sahara desert, living conditions in the camps are extremely difficult. On top of this, however, young Saharawi refugees face challenges that are specific to their group. During the armed struggle, most Saharawi men, and young men in particular, were at the frontline, leaving women to build and run the refugee camps. Since the ceasefire, all men have returned to the camps, where they began to pursue higher education and professional skills. Furthermore, there has since been a change from a voluntary economy to a money-based economy. This, in turn, has led to a shift in the socioeconomic demands and needs of the Saharawi youth living in the camps.

The socioeconomic situation of the Saharawi youth in the camps is grime. There is a lack in many of the basic necessities and infrastructures, and the job opportunities are very limited considering the resources available. Over the years, the Saharawi government-in-exile has put great emphasis on educating the younger generation. This has created many graduates specialized in all possible professions who are now, however, unable to find employment in the camps. Many young people continue to have a spirit of voluntarism, but because of their needs for money, they are pushed to seek paid jobs. These circumstances have generated an emigration of skilled labour, leading to the brain drain of, inter alia, medical doctors, engineers and professors, who are of critical importance to the well-being of the refugee community. Moreover, the lack of recreational facilities and activities leaves the youth with a sense of empty purpose.

Due to the lack of higher education facilities in the camps, the majority of young Saharawis seek education abroad. There, they face many challenges and obstacles, including poor educational circumstances and boarding conditions. Doubly exiled, the Saharawi students live away from home from a very young age, a time when they most need the emotional and psychological support of their family network. After spending many years receiving professional and skilled training, the Saharawi youth return to the camps where they find little prospects for the future. A more recent issue is that many Saharawi students have had to interrupt their education, given the current circumstances in Syria and Libya, highlighting their dependence on, and thus their vulnerability to, the situations in other countries.

Western Sahara is divided by the longest military wall in the world. Referred to as the "Wall of Shame", this structure divides the Saharawi nation, its people and its families. Many young Saharawis have never seen or met their own family members, including siblings. This division and scattering of the Saharawi population endangers the Saharawi identity. The wall, furthermore, represents an emotional and psychological obstacle for the Saharawi youth, preventing them from movement or access to their natural resources in the non-self-governing territory of Western Sahara. While the Saharawi refugees are exposed to severe economic hardship and an extreme dependence on humanitarian aid (for example ECHO's contribution which was only recently reduced by half), the rich natural resources in the non-self-governing territory are exploited without the Saharawi population profiting.

Yet, despite the difficulties young Saharawi refugees are facing, a return to Western Sahara is not a conceivable alternative to exile.

In the non-self-governing territory, Saharawi youths experience discrimination, a similar lack of opportunities, as well as repeatedly violations of their most basic human rights.

After an illusory peace following the 1991 ceasefire, the young Saharawis began to initiate peaceful and non-violent demonstrations against the status quo. This movement began with the first Intifada in 1999, followed by the Intifada of Istiqlal in 2005 and more recently, Gdeim Izik in 2010. These non-violent and civilized protests reflected the Saharawi youth's rejection of the status quo. Despite their peaceful nature, several cases of human rights violations through Moroccan authorities were reported, especially against activists.

From 1975 to nowadays, a large number of youths in the non-self-governing territory of Western Sahara have experienced forced disappearance, arrest, and imprisonment without fair trial where they face torture and are forced to live in dire prison conditions. Furthermore, young Saharawis have faced most brutal assassinations and murders. The most notable cases are those of Husain Lektaif and Baba Khaiya who were murdered on the campus of the University of Agadir in 2008. Habad Hamad faced a similar fate in 2011 at the Swisi campus of the University of Rabat.

Morocco has neglected to build higher educational facilities such as universities and training institutes in Western Sahara, Saharawi students are therefore obliged to study at universities in mainland Morocco, where they often suffer discrimination. Furthermore, Saharawi citizens in Western Sahara experience high levels of unemployment and socioeconomic marginalization. Young Saharawis face discrimination when seeking to enter the labour market, and when they do find employment, this is usually in the form of low-paid jobs, where they are deprived of their most basic labour rights. Moreover, the Moroccan settlers in the territory are given priority in relation to job opportunities and in the assignment of managerial positions.

Whether in the refugee camps in southwest Algeria, in the non-self-governing territory of Western Sahara or in the diaspora, the Saharawi youth is growing up in an extremely difficult context that offers them little perspective, both in their daily lives and for their future. Nevertheless, the Saharawi youth has demonstrated great eagerness to develop and achieve an equitable, just, and democratic society that offers its people security and dignity.

The stalemated attempt to resolve the Western Sahara conflict via political means in the framework of the UN-led peace process is however increasingly leading to a sense of indifference amongst the youth, a loss of their confidence in the peace-process, and a growing frustration with the status quo. The referendum, promised back in 1991, is therefore urgently needed; credible steps towards fulfilling this promise need to be taken. The younger Saharawi generations increasingly see a return to armed struggle as their last alternative to ending the Western Sahara conflict after 23 years of upholding non-violent and peaceful means to end their struggle.

The Saharawi youth therefore needs signs that the international community will take its responsibility seriously. The Human Rights Council, the United Nations and the international community need to take a firmer stand in resolving this conflict. With the organisation, preparation and execution of the promised referendum on self-determination, in line with the Vienna Declaration and the UN Charter, as the ultimate goal, the following aspects should be given utmost priority:

- The establishment of a permanent human rights monitoring mechanism in the non-self-governing territory of Western Sahara by extending the mandate of MINURSO to include the respective capacity.
- Renewed visits by mandate holders within the Special Procedures of the Human Rights Council to the territory, without further delay, to investigate the human rights situation in situ.
- The strict enforcement of international law and human rights standards concerning the exploitation of natural resources in non-self-governing territories. States and international organisations should refrain from entering agreements and engaging in business activities involving resources extracted from the territory.

United Nations A/HRC/25/NGO/52

General Assembly

Distr.: General
25 February 2014

English only

Human Rights Council
Twenty-fifth session
Agenda item 6
Universal Periodic Review

Written statement* submitted by the International Federation for Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-11267
1411267

Please recycle

Ireland Interim Report

1. The Irish Council for Civil Liberties (ICCL)[1] welcomes Ireland's Interim Report on UPR which provides an important milestone in measuring Ireland's progress within the First UPR Cycle.

2. Recognising the importance of Ireland's role as a member of the UN Human Rights Council, the ICCL launched its UN Human Rights Council *Legacy* project in 2013. At the core of the project, is a belief that the implementation of UN recommendations at home bolsters a country's capacity to promote and protect human rights abroad. The *Legacy* project is tracking the progress of seven key impact areas (ratification of ICPRD, ratification of OPCAT, effective NHRI, marriage equality, gender recognition, reproductive justice and recognition of Travellers as an ethnic minority) throughout the term of Ireland's membership of the Council.[2]

3. On 11 February 2014, the ICCL hosted a range of civil society organisations who came together to report on Ireland's progress in implementing its First UPR Outcome Report.[3] The audience was addressed by Ms June Ray of the Civil Society section of the Office of the High Commissioner for Human Rights and organised across 11 broad thematic areas. The discussions captured at the event have informed the issues highlighted in this statement.[4] In line with the recommendation to Ireland from Austria, we look forward to the Government's engagement with civil society including public consultations, in the follow up to UPR.[5]

4. We reiterate our call that recommendations that would enhance effective domestic monitoring of human rights compliance be implemented rapidly. Since the UN Human Rights Council adopted Ireland's UPR Outcome Report in March 2012, Ireland has not ratified the International Convention on the Rights of People with Disabilities (ICRPD)[6] nor the Optional Protocol to the UN Convention against Torture and other Inhuman or Degrading Treatment or Punishment (OPCAT).[7] Ireland signed both of these international treaties almost seven years ago (ICPRD: March 2007 and OPCAT: October 2007). We reiterate our call for Ireland to progress these ratifications as a matter of priority.

5. We welcome publication of the Assisted Decision-Making (Capacity) Bill 2013[8] which, following enactment should provide an improved legal framework for supporting people to exercise their legal capacity and thus enable Ireland to ratify the ICRPD. We call on Ireland to set out a detailed timetable for ratification of the ICRPD, to provide details of when it intends to commence in full the legislative components of the National Disability Strategy 2004[9] and provide details on progress in reviewing Ireland's existing mental health legislation.[10]

6. Regarding OPCAT, the Minister for Justice, Equality and Defence stated in 2013 that the Government had approved the drafting of a General Scheme of an Inspection of Places of Detention Bill, which would include provisions to enable ratification of OPCAT including by enabling the designation of a National Preventative Mechanism.[11] Despite indications that the Bill would be introduced last year, it now appears unlikely that legislation will be produced by the end of 2014.[12]

7. UPR recommendations to "reinforce the independence and capacity of the Irish Human Rights Commission"[13] by "endowing it with adequate and sufficient resources"[14] may be a step closer to realisation as the Irish Human Rights and Equality Commission Bill is expected to be presented to the Oireachtas (Irish Parliament) shortly.[15] We welcome the appointment of fourteen independently selected Commissioners to oversee the establishment of the new body; however, concerns remain regarding the extent to which the new Commission will comply fully with the UN Paris Principles both as regards the independence of its financing and given its reporting relationship to the Department of Justice and Equality.

8. We welcome the passing of the constitutional referendum on children's rights and the establishment of the new Child and Family Support Agency.[16] We look forward to these structural reforms delivering a change in services and outcomes for children and young people in Ireland.

9. The current Programme for Government[17] shadows the timeframe of Ireland's First UPR Cycle and it sets out commitments that correspond directly to certain UPR recommendations under consideration. However, we

have yet to see movement with respect to reforms on domestic violence legislation[18] (preventing Ireland from ratifying the Council of Europe Convention on violence against women and domestic violence)[19] or legislation on the right to engage in collective bargaining.[20] The long-promised Immigration, Residence and Protection Bill has yet to be published.[21]

10. Progress has been achieved regarding access to education and the Minister for Education has established a Forum on Patronage and Pluralism in primary schools.[22] In Ireland's UPR Outcome Report, it was recommended that reform should take place to Ireland's equality laws which allow religious orders providing public services to discriminate against employees on the basis of moral ethos.[23] The Equality Authority has conducted a consultation on the need to reform these legislative provisions (in cooperation with the Irish Human Rights Commission) and is preparing proposals for Ministerial attention.[24]

11. Clear guidance to ensure that children are never denied enrolment or access to schools on the basis of religious belief or affiliation,[25] including in relation to the wearing of religious garb and/or symbols does not exist at national level and should be developed.

12. The ICCL is pleased to note that the Constitutional Convention[26] debated and agreed on certain matters relevant to UPR recommendations, and we welcome the Government's announcement of a referendum on same-sex marriage in 2015.[27] We look forward to further constitutional reform on amending the clause on women in the home and encouraging greater participation of women in public life,[28] and removing references to criminal blasphemy from the Constitution.[29]

13. A lack of effective complaints and monitoring mechanisms, issues of overcrowding, the continued lack of in-cell sanitation in many prisons leading to practices such as 'slopping out' and the use of prisons for immigration detention purposes were among the serious human rights concerns raised regarding Ireland's penal system.[30] Unfortunately, certain prisons continue to operate over their capacity, the practice of "slopping out" continues and there is no independent, fully-functioning and comprehensive prisoner complaints mechanism.

14. Despite a number of accepted recommendations,[31] no strategic action plan to combat racism and other forms of hate crime following the expiry in 2008 of the National Action Plan against Racism (NPAR) has been adopted.[32] Concrete measures within the criminal law should be introduced[33] to effectively combat and penalise non-expression based offences motivated by forms of hatred in relation to race, ethnicity, immigration status, xenophobia, religious intolerance, hatred based on gender, sexual orientation and/or disability.

15. Ireland should reform the Prohibition of Incitement to Hatred Act 1989 to afford greater protection to vulnerable groups in relation to expression based offences motivated by hatred. In addition, measures to combat all forms of racial profiling[34] by police, immigration or other statutory agencies should be introduced.

16. Legislation and training to ensure a more effective system of reporting and recording of incidents motivated by hatred should be introduced in line with recommendations,[35] including the establishment of dedicated data collection and disaggregation mechanisms to capture and classify the range of hate crimes and incidents.

17. The Minister informed the UN Human Rights Council during Ireland's UPR that recognition of Travellers as an ethnic group would be given "serious consideration" and hearings have been held by the Joint Oireachtas Committee on Justice, Equality and Defence.[36] It is expected that the Committee will report to the Minister in early 2014. The ICCL recommends that Traveller ethnicity be recognised in law without further delay. Adequately resourced effective policies concerning Travellers and Roma[37] should also be introduced to systematically reduce inequalities in health and mortality rates, inequalities in access to education, promote equitable access to justice, reduce disproportionately high unemployment and provide culturally appropriate accommodation.[38]

18. We welcome publication of the General Scheme of the Gender Recognition Bill 2013.[39] Concern remains that provisions of the proposed legislation do not meet international human rights standards, including that a Gender Recognition Certificate may not be issued to persons who are below 18 years of age on the date of

application.[40] The Government should also ensure such legislation guarantees, the rights of married Trans persons to legally acquire their preferred gender without recourse to dissolution of marriage.

19. Ireland should ensure that the rights of older people are protected[41] including the right to consultation and decision making on all aspects of one's life including healthcare and social needs. Legislation guaranteeing the right to issue advance planning directives and issues affecting end of life care should be introduced. Stronger measures to protect against elder abuse should be introduced.

20. Although Ireland rejected outright six recommendations[42] on bringing abortion law into line with international standards and the judgment in the European Court of Human Rights case, *A, B and C v. Ireland*, the Protection of Life During Pregnancy Act 2013[43] was passed in July 2013. This allows limited access to abortion in circumstances where the life (as opposed to health) of the mother is at risk but does not bring Irish law on access to abortion into line with ICCPR standards as recommended during Ireland's UPR.[44]

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1 The ICCL led a civil society coalition of seventeen organisations during Ireland's first UPR examination, under the campaign name, Your Rights Right Now, more information is available on www.rightsnow.ie.
2 For more information on the project please visit our website at www.rightsnow.ie.
3 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, (21 December 2011), UN DOC A/HRC/19/9.
4 For more Information on this event, please see www.rightsnow.ie.
5 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, para107.50.
6 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, para 105.1.
7 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, paras 105.2 and 105.3.
8 See http://www.oireachtas.ie/documents/bills28/bills/2013/8313/b8313d.pdf.
9 See http://www.dohc.ie/publications/nds_strategy.html.
10 Mental Health Act 2001, available at: http://www.irishstatutebook.ie/pdf/2001/en.act.2001.0025.pdf.
11 Written Answers, (6 February 2013), available at http://www.kildarestreet.com/wrans/?id=2013-02-06a.110&s=optional+protocol+to+the+convention+against+torture#g111.q (accessed 30/07/2013).
12 In the Government Legislative Programme for Spring/Summer 2014, the Inspection of Places of Detention Bill appears in Section of the Programme which refers to the Heads of Bills which have yet to be approved by Government. See http://www.taoiseach.gov.ie/eng/Taoiseach_and_Government/Government_Legislation_Programme/.
13 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, para 105.7.
14 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, paras 105.7, 105.12, 105.13.
15 See Heads of the Irish Human Rights and Equality Commission Bill 2012 available at http://www.justice.ie/en/JELR/20120605HeadsOfIHRECBill.pdf/Files/20120605HeadsOfIHRECBill.pdf.
16 See http://www.tusla.ie/.
17 Towards Recovery - Programme for a National Government 2011 – 2016.
18 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, para 106.36 to 106.38.
19 Specifically in relation to the lack of emergency barring orders under Irish law, provision for which is a requirement under the Convention.
20 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, para 106.46.
21 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, para 106.31.
22 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, paras 106.27, 106.48. See http://www.education.ie/en/Press-Events/Conferences/Patronage-and-Pluralism-in-the-Primary-Sector/The-Forum-on-Patronage-and-Pluralism-in-the-Primary-Sector-Report-of-the-Forums-Advisory-Group.pdf.
23 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, para 106.45.
24 Notice: Equality Authority calls for submissions on a proposed amendment to s37 of the Employment Equality Acts 1998 – 2011, See http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-9DVN281741828-en,
25 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, paras 107.47, 107.48
26 See https://www.constitution.ie/Convention.aspx.
27 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, para 106.44.
28 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, para 106.14. See https://www.constitution.ie/AttachmentDownload.ashx?mid=268d9308-c9b7-e211-a5a0-005056a32ee4.

29 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, para 106.17. See https://www.constitution.ie/AttachmentDownload.ashx?mid=b96d3466-4987-e311-877e-005056a32ee4.
30 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, paras 106.36 – 106.48.
31 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, paras 107.25, 107.26
32 www.integration.ie, Office of the Promotion of Migrant Integration, 2014, National Action Plan Against Racism (NPAR) 2005-2008, available at: http://www.integration.ie/website/omi/omiwebv6.nsf/page/Racism-npar-en, Accessed on 14 February 2014
33 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, paras 106.23, 107.19, 107.28
34 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, paras 107.13 & 107.24
35 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, paras 107.29, 107.32, 108.2
36 This review included oral representations by Traveller organisations. Further information is available at http://www.oireachtas.ie/parliament/mediazone/pressreleases/name-16316-en.html.
37 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, paras 107.31, 107.32
38 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, para 106.31.
39 http://www.welfare.ie/en/downloads/Gender-Recognition-Bill-2013.pdf.
40 Transgender Equality Network Ireland (TENI) "The Government's Gender Recognition Bill 2013", available at: http://www.teni.ie/attachments/dd37571c-b3de-452d-8e87-1e91bff47896.PDF.
41 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, paras 103.5, 107.12
42 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, paras 108.4 to 109.9.
43 http://www.irishstatutebook.ie/pdf/2013/en.act.2013.0035.pdf.
44 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, op cit, paras108.4.

United Nations A/HRC/25/NGO/53

General Assembly

Distr.: General
25 February 2014

English only

Human Rights Council
Twenty-fifth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, non-governmental organizations in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-11269
1411269

Please recycle

Indonesia: Existing law and policies puts Indonesian workers abroad at risk of abuse*

1. The Asian Legal Resource Centre (ALRC), the Network of Indonesian Migrant Workers (*Jaringan Buruh Migran Indonesia Cabut UUPPTKILN No. 39 tahun 2004,* JBMI) wish to draw the attention of the UN Human Rights Council (HRC) to the failure of existing Indonesian law and policies to provide adequate protection for Indonesian domestic workers abroad. The Hong Kong-based organisations are of the view that, instead of protecting the workers, the current law and policies authorise practices which put the workers at high risk of being abused.

2. In early January 2014, Erwiana Sulistyaningsih, a 23-year-old domestic worker, was sent back to Indonesia in poor health by her Hong Kong employer. Erwiana's face was swollen, the skin on her legs and arms was peeling, and she was unable to walk on her own. During her eight-months in Hong Kong, Erwiana was repeatedly beaten by her employer with various objects, denied her right to adequate food, and allowed to drink only limited amounts of clean water. She was suffering from an allergy but, instead of taking her to the doctor for medical treatment, the employer beat her up each time her allergic reaction occurred. Erwiana was prohibited from taking rest days, leaving the house, and sleeping at night. Her employer only allowed her to sleep for four hours, between 1–5 p.m.

3. After working for over a month in Hong Kong, Erwiana managed to escape from her employer who had failed to pay her salary and subjected her to daily scolding. Being desperate for help and not knowing anybody to call, she called her employment agency in Hong Kong. Instead of helping her, the agency sent a staff member to convince Erwiana that she had to go back and continue working for the employer as she has not finished paying the recruitment agency fee. Erwiana eventually returned to her employer who subjected her to further abuse following her attempt to escape.

4. A similar case took place previously in 2013. Kartika Puspitasari, another Indonesian domestic worker in Hong Kong, was subjected to repetitive assaults by her employers for two years. The physical abuses Kartika experienced include being hit with a bicycle chain on her head and had her face and arms burned with an iron. In an occasion when her employers went on holiday to Thailand for five days, Kartika was tied on a chair and forced to wear a diaper. She eventually managed to escape in October 2012 and her employers were sentenced to 3 – 5 years of imprisonment by a Hong Kong court a year later.

5. The ALRC and JBMI acknowledge the individual criminal responsibility of the employers as well as the obligations of Hong Kong SAR government in both Erwiana and Kartika cases. The organisations believe, however, that the abuses experienced by the workers resulted in part from provisions under the existing Indonesian law and policies which put the workers abroad at a high risk of abuse. As an example – despite their promising title – Law No. 39 Year 2004 on the Placement and Protection of Indonesian Workers Abroad and Minister of Manpower Regulation No. PER-18/MEN/IX/2007, oblige the workers to pay onerous fee to the recruitment agency which put them in severe debt with the agency. Consequently, the workers hardly can refuse the agency's orders – even if it is to stay with an abusive employer, as happened in Erwiana's case.

6. Leaving their recruitment or employment agency is not an option for Indonesian migrant domestic workers. The 2004 law prohibits direct hiring, meaning it is illegal for an Indonesian migrant domestic worker to be employed without any intermediary such as a recruitment and employment agency. For Indonesian migrant workers in Hong Kong, leaving their current employment agency and joining another one is not permitted unless the workers had surpassed a period of two year. This rule was introduced by the Indonesian Consulate in Hong Kong in 2011 through its Circular No. 2524 and Online System.

7. The practice of overcharging does not only place the Indonesian migrant workers in severe debt with the agency but it also results in their underpayment. As an example, according to a decree issued by the Minister of Manpower in 2012, an Indonesian worker in Hong Kong, such as Erwiana, shall be charged with a total fee of IDR 14,780,400 or HKD 13,436 by the employment agency. The fee includes the costs of work training, insurance, medical examination, and travel document application. In practice, however, Indonesian workers employed in Hong Kong are asked to pay a total fee of HKD 21,000, deducted from the workers' salary in their first seven months. Since HKD 3,000 is deducted from their HKD 4,010 monthly salary, Indonesian workers in Hong Kong typically receive slightly above HKD 1,000 in their first seven months of employment.

8. Indonesia became a state party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) in April 2012. However, little has been done by the government to enhance the protection of Indonesian domestic workers abroad. The ALRC and JBMI note that the Indonesian government and parliament are currently revising the aforementioned 2004 law on migrant workers. The organisations are concerned, however, that there are no substantial changes in the revision draft that can help to minimise the risk of Indonesian workers abroad being abused. As in the existing law, direct hiring remains an illegal act instead of an option the workers can consider. The revision draft also fails to address the heart of the issue of overcharging and debt widely experienced by the Indonesian domestic workers.

9. In her 2004 report, the UN Special Rapporteur on migrant workers, Ms. Gabriela Rodriguez Pizzaro, expresses her concern to the issue of overcharging experienced by migrant domestic workers. In her recommendations she called for the government "to take initiatives so as to avoid the indebtedness of migrant domestic workers, including agreements which provide that their recruitment costs be covered by the employer and/or recruitment agencies and State credit programmes for migrant women". The ALRC and JBMI endorse the Rapporteur's view and call for the Indonesian government to include her recommendations in the draft of revision to Law No. 39 Year 2004.

10. Under Article 66 of the ICMW, the government of Indonesia is obliged to effectively regulate and monitor recruitment agencies and other intermediaries. The draft of revision, therefore, should also be focused on improving the current inadequate government scrutiny over the agencies under the 2004 law on migrant workers. At the moment, the government supervision only takes the forms of licensing approval and renewal as well as the imposition of sanction. In accordance with the Committee on Migrant Workers's General Comment No. 1, the revision of the migrant workers law should enable transparent inspection by relevant government agencies.

11. In view of the above, the ALRC and JBMI request the HRC to urge the Indonesian government to:

a. Comprehensively review and revise the Law No. 39 Year 2004 on the Placement and Protection of Migrant Workers and other related policies, such as the Minister of Manpower Regulation No. PER-18/MEN/IX/2007. The review and revisions should be aimed at the improvement of the well being and protection of the Indonesian domestic workers abroad. The changes made should based on careful considerations Indonesia's obligations under the ICMW which the government ratified in 2012 and other relevant international standards;

b. Consult and take up recommendations from the civil society groups in Indonesia as well as the Indonesian domestic workers abroad on reviewing and revising Law No. 39 Year 2004, and;

c. Closely cooperate with the government and the civil society of employment states in establishing an effective protection mechanism for Indonesian workers abroad.

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*Network of Indonesian Migrant Workers, a coalition of Indonesian migrant workers group based in Hong Kong SAR, China, consisting of Asosiasi Buruh Migran Indonesia (ATKI), Indonesian Migrant Workers Union (IMWU), Gabungan Migran Muslim Indonesia (GAMMI-HK), Liga Pekerja Migran Indonesia (LiPMI), and Persatuan BMI Tolak Overcharging (PILAR), NGO(s) without ECOSOC consultative status, also share the views expressed in this statement.

United Nations A/HRC/25/NGO/54

General Assembly

Distr.: General
25 February 2014

English only

Human Rights Council
Twenty-fifth session
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-11259
1411259

Please recycle

Pakistan: disappearances

1. Balochistan province, at this moment in time, may be said to be the place in the world where the largest number of enforced disappearances take place. The Supreme Court of Pakistan and several High Courts have recognised the high level of disappearances that take place in the province. However, neither the courts nor the government have been able to take any effective steps to stop the practice of enforced disappearances or even to bring down the numbers of such instances that take place. Conservative estimates place the number of enforced disappearances at between 10,000 and 15,000.

2. In response to the large scale enforced disappearances taking place in Balochistan a long march has been undertaken by the families of disappeared persons and their sympathizers calling for the recovery of the missing persons. The first leg of the march was from Balochistan to Karachi where the marchers walked for nearly 730 kilometers. The participants continued with the march despite of death threats being leveled against them. The marchers received warm welcomes throughout the journey where expressions of solidarity pointed out the brutal situation prevailing in Balochistan.

3. The government of Pakistan has refused to take any active steps to sign the International Convention for the Protection of All Persons from Enforced Disappearance. It appears that the government is under pressure from the armed forces and the intelligence services to avoid any serious steps to discourage the practice of enforced disappearances as a counter insurgency measure against the people of Balochistan. The parliament has not held any serious debate on the issue of enforced disappearances despite of the Supreme Court and High Courts making some attempts to intervene in the issue.

4. The Asian Legal Resource Centre (ALRC) draws the attention of the Working Group on Enforced Disappearances of the United Nations to intervene in order to stop the disappearances and the accompanying brutality such as large scale illegal abductions and the mutilation of bodies. As the Working Group on Enforced Disappearances is aware of the ongoing large scale disappearances through the interventions of many human rights organisations the appropriate response from the Working Group, as well as other UN agencies should be to cause a serious discussion with the government of Pakistan and to provide advice and any other technical assistance in order that the government may intervene more clearly and decisively to stop the ongoing practice of enforced disappearances.

5. The ALRC also calls on the international human rights community to treat the problem of enforced disappearances in Balochistan as one of the top priorities of the civil society organisations and to take appropriate with the government of Pakistan as well as the relevant authorities in their own countries and the relevant United Nations agencies.

6. The delay or failure to act under these circumstances will lead to the loss of lives on a daily basis in Balochistan.

United Nations A/HRC/25/NGO/55

General Assembly

Distr.: General
25 February 2014

English only

Human Rights Council
Twenty-fifth session
Agenda item
Universal Periodic Review

Written statement* submitted by the Arab NGO Network for Development, non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-11281

1411281

Please recycle

Human rights violations of Israel in Occupied Palestinian Territories and towards Palestinian Arab Citizens*

As the Arab NGO Network for Development (ANND) and the Palestinian NGO Network (PNGO) we welcome the commitment shown by the international community to take the Universal Periodic Review of Israel, on 29 October 2013, as another occasion to call Israeli government to give an immediate halt to occupation in Palestine.

Given that 2014 is the UN International Year of Solidarity with the Palestinian people and marks 10 years since the International Court of Justice ruled that Israel's apartheid wall and colonial settlements are illegal and that countries around the world are legally obliged to hold Israel accountable and not to support Israeli violations of international law[1], we reiterate our call to international community to pressure on the Government of Israel to end the longest occupation in history. This should include as well dismantling of settlements, demolition of the apartheid separation wall, and surely the fully lifting of the imposed siege on the Gaza strip.

While many of the interventions during the review session highlighted severe human rights violations that Palestinians face, we would like to note that development in Palestine won't succeed nor last without full enjoyment of the right to self-determination and the ability of the people of controlling resources and border crossings, including land and water. Indeed, systematic Israeli policies towards expropriation of Palestinian resources, deinstitutionalization of Palestinian economy and imposition of closure, results in severe socio-economic deprivation for Palestinians, hinders Palestinian development, creates increasing dependency on international aid and causes isolation and impoverishment[2]. This becomes the root cause of the violation of Palestinians right to adequate standard of living, whereby current figures show that approximately 70% of the Palestinian population continues to work to alleviate this alarming trend.

In line with several recommendations made with regard to giving an immediate halt to illegal settlements, we stress that continuing expansion of Israeli settlements, together with confiscation of properties not only constitute a breach of international law but also violates economic, political, social and cultural rights of Palestinians. By the end of 2012 around 650,000 Israelis had settled in the occupied Palestinian territory[3]. We reiterate that the obligations of Israel with respect to the right to adequate housing of Palestinians in the occupied Palestinian territory include ensuring access to basic shelter and housing, and refraining from interfering with the enjoyment of these rights. Moreover, in the past ten years, 471 Palestinian houses and other structures have been demolished in Jerusalem affecting 1,634 Palestinians[4].

With an unemployment rate currently standing above 21% in OPT, the Israeli policies violation of the right to work is evident; including restrictions on movement, work permits and unequal and discriminative policies undertaken by Israel. The latter derives from continuous selective approach to employment opportunities implemented within Israel to the interest of Jewish population while discriminating the Palestinian Arabs and despite the Equal Opportunities in Employment Law (1988) (amended in 2010).[5] The discriminative Israeli policies continue as well on wage gaps, whereas approximately 12% of Palestinian Arab citizens of Israel are paid below the minimum wage.[6]

During the review, the Delegation stated that Israel was working to improve the movement of people and goods and that there were only a few checkpoints in place, which were normally open. Yet, continuous cases of death en route to hospital signal the limitations on movement of patients and health staff[7]. Moreover, restrictions on importation of medical supplies, equipment and spare parts still continue and evidently limit the access of Palestinians to health

[1] http://www.bdsmovement.net/2014/2014-begins-with-boycott-success-11650
[2] PNGO Submission for the CESCR 19th session, http://www.cesr.org/downloads/CESCR%20Israeli%20Violations.pdf
[3] http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/FFM/FFMSettlements.pdf
[4] http://www.alhaq.org/documentation/weekly-focuses/780-palestinians-in-jerusalem-subjected-to-house-demolitions
[5] The Inequality Report, The Palestinian Arab Minority in Israel by Adalah notes that only 2.4% of all industrial zones in Israel are located in Arab towns and villages. http://www.adalah.org/upfiles/2011/Adalah_The_Inequality_Report_March_2011.pdf
[6] E/C.12/ISR/CO/3, CESCR Concluding Observations, 2011
[7] http://www.alhaq.org/documentation/weekly-focuses/761-14-year-old-palestinian-girl-dies-en-route-to-hospital-after-delays-at-checkpoint

services, as well as of the professional development of staff[8]. In this regard, we acknowledge the WHO statement that "the only way to remove restrictions on access to healthcare is to remove the occupation itself"[9].

Last but not least, despite Israel's claim that "Israel place no legal restrictions on the right of organizations to engage in activities for the promotion and observance of human rights", Israeli authorities continue to practice arbitrary arrests and detention, raids, deportations, travel bans, visa denials and media attacks and restrict Palestinians human rights activism.

In light of these, we urge the Council members to reiterate their recommendations to Israeli government to:

- Give an immediate end to occupation and illegal settlements that stand as the root cause and obstacle for the self-development of Palestinian society
- Respect all United Nations resolutions and its obligations under international human rights law and international humanitarian law, with a view to guaranteeing fundamental rights and freedoms to all Palestinians in the Occupied Palestinian Territories
- Comply with the recommendations received in UN human rights monitoring mechanisms, including that of the Committee on Economic and Social Rights
- Fully respect the rights and dignity of the Palestinian people, including their rights to life, to live in dignity, adequate food and housing, together with their freedom of movement.
- Given the importance of agriculture for Palestinian economy, give an immediate end to Israeli policies that hinders Palestinians access to their agricultural lands and water in all their territories.
- Put an immediate end to all kinds of obstacles such as restrictions on movement, work permits and unequal and discriminative policies undertaken by the occupying forces in the OPT, which hinder the right to work of the Palestinians

Finally, we call upon the Israeli government to accept all recommendations received during the review and to translate them into comprehensive, concrete and effective action.

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*The Palestinian NGO Network NGO(s) without consultative status, also share the views expressed in this statement.

[8] http://www.emro.who.int/pse/palestine-news/5-years-gaza-blockade.html
[9] Stated by WHO Head of Office for the OPT, Tony Laurance, http://www.map-uk.org/regions/opt/news/view/-/id/1116/

United Nations A/HRC/25/NGO/56

General Assembly

Distr.: General
25 February 2014

English and Spanish only

Human Rights Council
Twenty-fifth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint written statement* submitted by the World Federation of Trade Unions, a non-governmental organization in general consultative status; France Libertes : Fondation Danielle Mitterrand, the American Association of Jurists, non-governmental organizations in special consuitative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-11285
1411285

Please recycle

Violations of the right to social protest in Colombia

Colombia has distinguished itself by a marked social inequality (1) that has given rise to a sustained social, political and armed conflict for over half a century, and which presently has resulted in levels of poverty reaching 70% of the population, abysmal differences in development between regions, and strong ethnic and gender inequalities among other indicators. The same applies to land distribution where 52% of the land belongs to 1, 15% of the people, and 49, 1% of the national income ends up in the pockets of the richest 10% of the population (2).

In this context of acute social, political and economic inequality, protest rightful voices have been heard against the government, leading to political opposition and social upheaval. The state has, in response, treated these legitimate expressions of discontent, by invoking the "doctrine of national security, and claiming that the protests are coming from "internal enemies" or "terrorists". It has, accordingly, repressed protesters and persecuted opponents by jailing them. At the same time, the governmental sector has been acting against the interests of the poorest sectors of the society, thus increasing inequalities and giving away the country's natural resources to transnational capital (corporations).

In order to do this, the Colombian state has developed policies of national security, also referred to as "democratic security policies", or "policies of civil security", and strengthened out of proportion its law enforcement forces. Simultaneously, the funds allocated to education, health, employment and to other social needs have been decreased. As a consequence, Colombia has become the country with the largest military budget in the region (3).

In addition, human rights violations have increased significantly in the last decades, and the use of abusive preventive detention measures has been alarmingly augmenting. This has lead to a large increase in the number of people sent to prison, and to a greater disregard for human rights in the places of detention.

Thus, between July 1996 and June 2002, 2,869 persons were illegally detained, during President Uribe´s administration. This number has alarmingly increased to 6.332, from August 7, 2002 and August 6, 2004 (two years). Persons were arrested on the mere and unproven suspicion of belonging to insurgent groups or of collaborating with them

On the other hand, according to the Mission for the Verification of the Human Rights Situation, during 2010 and 2011, a significant number of defenders of human rights, underscoring the land problems, were detained as well as more recently, opponents of mining projects, students, and peasants among others.

The enactment of the Bill on the Security of Citizens (Bill 1453 of 2011) during the administration of President Juan Manuel Santos clearly evidences the criminalization of the social protest. The Bill modifies the Penal Code and incorporates the new offense of "obstruction of public ways leading to alteration of public order", punished by up to 48 months in prison, and restricting constitutional rights such as freedom of expression and assembly. It violates, moreover, the penal principles of legality and of proportionality of the sanction to the offense.

The 2013 Bill on the Security of Citizens was used as a repression and a punishment instrument against peaceful protests and mobilizations organized by the social movement, including peasants, miners, agricultural workers (Catatumbo region), indigenous peoples (Minga Social Indigena), etc. causing more than 902 victims of human rights violations, and up to 315 arbitrary detentions.

With the collaboration of the mainstream mass media, the implementation of this Bill has turned the social organizations into pariah organizations, a legal object of persecution, and presented their leaders as delinquents, armed rabble rousers. Consequently, it has led to the militarization of rural and urban areas, increasing the displacement of populations, the plunder (4) and accumulation of land, augmenting the number of political prisoners, forced registration, judicial false set-ups, and an endless list of obstacles to social organization and action.

This Bill on the Security of Citizens, far from constituting a new factor, is an extension of the Statute of National Security (Faceless Regional Justice) officially applied between 1978 and 1982 by the administration of Julio César Turbay, and taken up enthusiastically by the Policy of Democratic Security, of Alvaro Uribe Vélez, between 2002 and 2010. This has been followed by Juan Manuel Santos´s administration, by means of repressive measures such as the

Military Penal Jurisdiction, and the implementing of the Free Trade Agreement with the USA, the Consolidation Plan II (5), and the Sword of Honor Plan, the last one meant to combat insurgencies that had been in existence for more than forty years. These actions penalize social protest and democracy muzzling expressions of dissatisfaction by judicial and social control.

Juridical mechanisms of control allow for the discretional and arbitrary application of the law, fostering and even the strengthening private or paramilitary forces. In addition, the support is given by the State to the cooperation of the National Army and the Police, so as to extend the status quo, and legitimize State crimes. Similar in character are the Consolidation Zones, located in places of geostrategic importance for the extraction of national resources, under the control of the army and the judiciary apparatus. They use violence as a means of expropriating the land in order to implement mega projects carried out by transnational firms.

The Consolidation Zones are aimed at strengthening the process of the hoarding and the sale of land to foreign capital, without any kind of regulation. Transnational companies kill the local peasant economy by taking the most fertile areas and the water sources in order to cultivate single crops, such as sugar cane, rice, oil palms, so as to ensure production of agro fuels and to favor the development and wealth of other countries. They cause population displacement, lack of food security and sovereignty (6), foster unemployment and poverty, and do irreparable damage to soils fertility. Undoubtedly, we witness here the systemic plundering of a country being sold to foreigners little by little.

This has put Colombia in the midst of a complex humanitarian crisis. One of the most tangible indications of the criminalization of protest has been the occurrence of 3,335 cases of extrajudicial executions (false positive), and the existence of more than 9,500 political prisoners of both genders. The overwhelming majority of the social movement, 90%, is made up by peasants, students, human rights demonstrators, trade unionists, persons of African descent and political opponents, whose only crime has been to fight for social justice. In a recent event, during the first month of mobilization for the National Agrarian and Popular Stoppage, 512 persons were taken to court, 9 were murdered, and near 800 wounded.

Colombia plays a key geostrategic role in the region, and it is therefore important to follow closely what happens in the country, and pay attention to the peace conversations taking place in Havana between the Colombian administration and the FARC – EP insurgents, so as to favor initiatives that attempt to bring a negotiated political solution to the social and armed conflict, allowing for the establishment of a fair and lasting peace, which incorporates social justice and equality.

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(1) In 2011 Colombia was third in the world list of the most socially unequal countries (UNDP, 2011).
(2) The figure is confirmed by the Gini coefficient of 0,85 (UNDP, 2011 and UN, 2010).
(3) In 2010 Colombia invested 5.09% of GNP(Otero, 2011).
(4) According to estimates by UNDP, 6,6 million hectares were abandoned because of forced displacement of populations between 1980 and 2010. This is equivalent to 12, 9% of all the fertile soil of the country (UNDP, 2011b:280).
(5) The first part of the Consolidation Plan was carried out by paramilitary groups over the last 25 years and left behind 175,000 corpses.
(6) In 2011, despite being an agricultural country, Colombia imported some 10 million tons of food. The figure increased by 52, 5% the following year.

United Nations A/HRC/25/NGO/57

General Assembly

Distr.: General
25 February 2014

English only

Human Rights Council
Twenty-fifth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-11283
1411283

Please recycle

Philippines: Zero conviction under Anti-Torture Law

1. The Asian Legal Resource Centre (ALRC) expresses its deep concern on the failure of the Philippine government to investigate, prosecute and convict state agents and their accomplices for violating the Anti-Torture Act of 2009. The law has been in operation for over four years now; however, none of the perpetrators involved in the dozens of cases we have documented have been convicted for their crimes.

2. The ALRC recalls the two Resolutions adopted by the General Assembly on 19 December 2011 (A/RES/66/150, para. 13) and on 20 December 2012 (A/RES/67/161, para. 14), prohibiting those convicted for torture to get involved "in the custody, interrogation or treatment of any person under arrest"; however, the zero conviction renders these Resolutions irrelevant. Those accused of torture are still very much involved in taking custody of persons. While there is no conviction against state agents, public officials and their accomplices committing torture, torture victims are routinely detained, charged and prosecuted on evidence taken by way of torture.

3. During the 19th session of the HRC, on February 24, 2012 the ALRC has already raised its concern on the emerging pattern of dismissals of torture complaints. The ALRC has informed the Council about the five torture cases. Of the five, two years on only one case—that of Darius Evangelista, tortured by police in Tondo, Manila in March 5, 2010, has seen progress where some of perpetrators have been arrested and prosecuted. Of the remainder of the four cases, and the subsequent cases that we have documented, many have never been effectively investigated, prosecuted, let alone the perpetrators convicted.

4. The ALRC recalls the report of Juan E. Méndez, Special Rapporteur on torture, containing his Observations on communications transmitted to Governments. On the Philippines, he noted the inability of the government to respond to communications (A/HRC/22/53/Add.4, para. 110) concerning the torture case of Melissa Roxas, and "thereby failing to cooperate with the mandate" issued by the Council. The ALRC shares fully with the observations of Mr. Mendez. This failure to cooperate is the regular practice of the government, rather than an exception based on ALRC's experience of asking the government to intervene.

5. The Philippine government fails not only to cooperate with the Council's mandate, but also to effectively implement the Anti-Torture Act:

6. **Failure to "promptly investigate":** In Resolutions adopted by the General Assembly, on 19 December 2011 (A/RES/66/150, para. 7), on 20 December 2012 (A/RES/67/161, para. 7); and by the Human Rights Council, on 12 April 2013 (A/HRC/RES/22/21, paras. 4, 8), they strongly emphasize the importance of investigating all allegations of torture promptly. Section 9 (a) of the Anti-Torture Act, also legally requires "a maximum period of sixty (60) working days" to complete an investigation on complaint for torture.

7. However, the five government agencies—the Commission on Human Rights (CHR), the Public Attorney's Office (PAO), the Philippine National Police (PNP), the National Bureau of Investigation (NBI) and Armed Forces of the Philippines (AFP)—who has the legal obligation to investigate torture complaints, fail to comply with this provision in a routine, systematic and widespread manner.

8. The failure to "promptly investigate" occurs: first, by either not conducting or choosing to ignore complaints of torture submitted to it; second, even if they investigate, the result of their investigation and findings take months, years or do not appear at all. The government's failure to "investigate promptly" violates the absolute and non-derogable nature of the prohibition of torture in the Convention against Torture (CAT), in General Assembly Resolutions (A/RES/66/150; A/RES/67/161), Resolution of the Council (A/HRC/RES/22/21), and the Anti-Torture Act.

9. On the first category, no investigation was conducted on the torture of a rape suspect by former Manila Mayor Alfredo Lim on June 21, 2013 or the torture of three activists, one of whom was a woman, on November 23, 2009, at the headquarters of the Philippine Air Force Camp in Batangas. By not investigating promptly and not investigating complaints at all effectively denies torture victims possibilities of remedy and redress. As a result, evidence crucial for prosecution: the psychological and medical condition of the victim, testimonies of the victims and her/his potential witnesses, amongst others, are not collected.

10. On the second category, in the torture case of Darius Evangelista, it took more than a year for the Department of Justice (DoJ) to conclude that the policemen involved had criminal liability. In the case of Rolly Panesa, a security guard tortured by police and military officers in October 5, 2012, the DoJ has not yet completed its investigation to date. The delay in concluding investigation results in the perpetrators avoiding criminal responsibility by either going into hiding or leaving the country, victims, their families and the witnesses are exposed to threats and reprisals; or, victims and complainants losing interest in prosecuting the case.

11. The case of a 17-year-old boy who was tortured inside the women and children's desk of the police in Kidapawan City on December 11, 2010, is a clear example to this. The victim, his family and witnesses, withdrew from prosecution due to insecurity. The boy and his parents filed criminal, administrative and civil charges against the police; however, due to the failure of the prosecutor to conclude its investigation promptly and due to the absence of protection, they withdrew their complaint.

12. This case of the 17-year-old boy is one of the many examples where the CHR conducted its investigation, but the copy of their investigation report was never made available to the complainants. There are many cases where the CHR conducted its field investigation; but in cases where the ALRC had documented, neither we nor the complainants have obtained copies of their reports, let alone the progress of investigation. The latest was the torture of three boys by village (barangay) officials, who were receiving orders from a policeman, after they were arrested in Malate, Manila on February 8, 2013. The CHR did not produce a report on this.

13. **Failure to prosecute "all acts of torture":** The General Assembly Resolutions (A/RES/66/150, para. 14) and (A/RES/67/161, para. 15) have emphasized that the "perpetrators of all acts of torture must be prosecuted." These Resolutions considers grave acts of torture arising from armed conflict; but, if there is failure in prosecuting the perpetrators who commits systematic and widespread torture as part of its daily investigation, systematic torture arising from armed conflict would certainly have little room to be investigated, let alone prosecuted.

14. The torture of a 16-year-old boy caught in fighting between the rebels and soldiers in Zamboanga City on September 20, 2013 speaks to this. He was interrogated in absence of a legal counsel, deprived of food and forced to admit he was a rebel. His case is one of the hundreds of alleged rebels, including ordinary villagers, arrested in the aftermath of armed conflict. They are presently detained in Camp Bagong Diwa, Taguig City. Most of these detainees are believed to have been tortured. The ALRC is not aware of any investigation neither on the boy's case nor the rest of the detainees.

15. There is a domestic law, the Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity (RA. 9851), passed in December 11, 2009 stipulating acts of torture "committed as part of a widespread or systematic attack" constitutes crimes against humanity. But clearly the manner of how the government investigates and prosecutes "all acts of torture" committed in "widespread and systematic," be they armed conflict or part of its daily investigation, they are not compatible to the absolute and non-derogable nature of the prohibition of torture.

16. The Asian Human Rights Commission (AHRC), its sister organisation of ALRC has documented numerous cases of torture since the Anti-Torture Act was passed, and we have concluded that the use of torture is neither an exceptional nor isolated cases. The police, the military, public officials and persons acting upon their orders, systematically and in widespread manner use torture as its method to investigate, punish alleged criminal offenders, to enforce law and order, and they are strongly convinced that this is an effective method.

17. The discovery of a "wheel of torture (in Filipino *roleta ng kamalasan)*", a roulette which describes various methods of torture, on January 24, 2014 inside a private subdivision operated by and controlled by policemen in Biñan, Laguna, clearly demonstrates that the use of torture is deeply part of the security apparatus. The discovery was possible only because the CHR took an exceptional action, by investigating promptly and conducting on-site inspections of the detention facility even though, officially, they are not included in the list of official detention centres submitted by the police.

18. **Failure to protect victims and complainants**: To ensure that the complaints of torture are investigated promptly and prosecuted effectively, it is a prerequisite that adequate protection must be afforded to victims,

complainants and witnesses. Section 9 (b) of the Anti-Torture Act and Section 16 of the Implementing Rules and Regulations (IRR), does contain robust provisions obligating the government to provide complainants "sufficient protection against all forms of harassment" and that its protection must be "sufficient" respectively. However, this rights remains on paper.

19. The ALRC has observed that the failure of the government to offer, provide and ensure adequate protection to complainants is one of the reasons why torture complaints cannot be investigated and prosecuted. The IRR did indicate that victims and complainants "may avail of benefits" under the witness protection program, but in reality, neither the victim nor complainant can do so due to the restrictive nature of the Witness Protection, Security and Benefit Act, on who it could admit in the program. This law is also not clear on whether it is obliged to provide protection to torture victims, say those in detention or being prosecuted based on evidence of torture.

20. In fact, none of the torture victims, complainants and witnesses that the AHRC has documented has been admitted under this program. The government is clearly failing to protect victims, complainants and witnesses, when it is needed the most. For example, in the case of the 17-year-old torture victim in Kidapawan City, despite the AHRC's repeated appeals to provide him, his family and his potential witness protection, the government did nothing. The victim and his family withdraw from prosecuting for fear of reprisals from the policemen.

21. The ALRC has observed that the inability, if not deliberate act in providing victims and complainants protection, is due to pervasive deeply-rooted bias against persons claiming to have been tortured by the police and the military. The mentality amongst some of the police, prosecutors and judges, is that: they do not make distinction between a torture victim exercising her/his right to remedy by complaining; and from a torture victim they claimed using torture as defence to get even with the authorities and to get away from crimes. There is a deeply held bias and stereotypes that criminals often claims torture once they are arrested, resulting in them taking lightly complaints of torture.

Recommendations

22. In light of the above and bearing in mind the absolute and non-derogable nature of torture, the ALRC urges the government of the Philippines to:

a. Initiate reforms, by law and in its practice by ensuring that the rights of the victims, complainants and witnesses, to seek remedy and redress are ensured by providing them adequate protection;

b. Put reports by the Oversight Committee, that was "created to periodically oversee" the implementation of the Anti-Torture Act of 2009 under the public domain so that civil society organisations are able to access them for transparency and collaborate for further enhancement of its implementation, and;

c. Study discrepancies between existing practices and applications of law in the Philippines with the Convention against Torture, and various other international law and jurisprudence on torture so that the failure of the current criminal justice systems and interpretations of laws can be adjusted for protection from torture.

United Nations A/HRC/25/NGO/58

General Assembly

Distr.: General
25 February 2014

English only

Human Rights Council
Twenty-fifth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

GE.14-11291

1411291

Please recycle

Sri Lanka: The neglect of mass graves

1. A mass grave has been found at Thiruketiswaram, Mannar in January 2014. In 2013 a mass grave was also found at Matale and the investigations are still at early stages regarding the body parts found in this grave. The general condition prevailing, relating to both of these mass graves is that the investigations are not being conducted in terms of modern forensic methodologies which are essential for the proper preservation of the findings as well as the prevention of the destruction of the materials found in the mass graves in the course of excavation. Both at Mannar and Matale the mass graves were dug with bulldozers and naturally such manner of excavation is not conducive to proper handling of the human material remains that are found in such graves. There are no guidelines that have been adopted for proper conduct of excavations, for the preservation of the findings as well as for proper conduct of investigations for the determination of the times at which the burials had taken place and other material elements which are needed for proper identification of the remains of persons which will enable the administration of justice relating to the persons whose remains are found in these mass graves.

2. At the mass grave in Matale the remains of over 150 persons were discovered. The crucial issue which came up was regarding the timing of the deaths and burials of the persons found in this grave. Initial inquiries conducted by Sri Lankan forensic archaeologist who examined the site said that it was not due to epidemic or any natural causes and a parallel investigation done by a Judicial Medical Officer said that it was not a regular burial site and both concluded that remains belonged to the period 1986-1990.

3. The period between 1986 and 1990 was marked by a period of armed conflict between the Janatha Vimukthi Peramuna (JVP) and the Sri Lankan government. Later, after a change of government several commissions regarding involuntary disappearances were appointed by the government and these commissions conducted enquiries regarding enforced disappearances in several provinces in Sri Lanka. In their reports they recorded complaints regarding the disappearances of over 20,000 persons. In the Matale area itself there were complaints of hundreds of disappearances and the complainants identified the names of several officers who were responsible for the abductions of large numbers of persons who subsequently disappeared. A particular army camp was also identified as a place which coordinated such abductions which ended in enforced disappearances. The name of the coordinating officer who was in charge of the camp at the time has also been publically identified. The said coordinating officer and several other identified persons are at present holding high posts in the government.

4. Under these circumstances the move by the government to have the samples of the remains flown to China for the conduct of inquiries into the timing of the deaths of these persons was objected to by the lawyers who appeared for the families of the disappeared persons. Among other grounds the lawyers stated that the facilities for such inquiries in China were not reliable and also that there were questions about the possible interference into such investigations, thus, creating the doubt about the independence of such inquiries. However, the magistrate allowed the remains to be sent to a facility in China.

5. As regards the discovery of bodies of Thiruketiswaram, Mannar, the inquiries are still at a rudimentary stage. The existence of the remains came to the notice of the public when workers constructing a highway came across some of the remains. Thereafter, in the course of excavation the parts of many bodies have been discovered.

6. The problems associated with both of these mass graves as well as some others found earlier point out the absence of clear legal provisions in dealing with excavations and investigations into the findings taken from such mass graves. There are no guidelines, particularly regarding the early stages of excavations and investigations. The methods adopted at present often rely on untrained manual labourers who use pickaxes and other similar tools and also bulldozers for such excavations. These methods are very much prone to the destruction of the remains that are meant to be discovered and preserved for proper scientific investigations. The very methods of excavation need to be scientific. Both from the point of view of the law and procedures as well as the use of equipment and the persons who use such equipment there is much that is not in keeping with the standards required. However, the government has made no attempt to improve the laws relating to these matters and also to provide for the proper methodologies for these purposes.

7. The United Nations Working Group on Enforced Disappearances need to look into these two mass graves at Matale and Mannar and also consult the forensic experts and judicial medical officers regarding the problems associated

with the conduct of these investigations. Without interventions from the United Nations Human Rights agencies it is unlikely that there will be the proper development of laws and procedures and the allocation of resources enabling proper excavations and investigations relating to mass graves.

United Nations A/HRC/25/NGO/59

General Assembly

Distr.: General
25 February 2014

English only

Human Rights Council
Twenty-fifth session
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by France Libertes: Fondation Danielle Mitterrand, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-11271

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The urgent situation in Sri Lanka

Root causes need to be analyzed if the international community desires to support the search for a just and equitable solution to the unresolved situation in the island of Sri Lanka.

According to historians, the Tamils are predominantly Saivites (known as Hindus), whose religion and written language date back more than 2,500 years. The Sinhalese people are predominantly Buddhists.

The Portuguese (1505) and the Dutch (1658) colonial powers ruled the kingdoms of the Tamil and Sinhalese peoples separately, each people having a distinct culture, religion and language. In 1796, Britain conquered the island and for administrative convenience, amalgamated the Tamil and Sinhalese kingdoms in 1833, creating a 'unitary state' brought across around a million Tamils from South India to work mainly on tea plantations in the Central Hill Country.

Marginalization of Tamils' rights under the guise of democracy

Although Parliament was prohibited from introducing discriminatory legislation, laws that discriminated against Tamils were introduced and implemented. A policy of colonizing the Tamil homeland areas was systematically implemented with methodical precision and calculated aggression.

This process of internal colonization changed demographic patterns, altering electoral boundaries and creating new Sinhala electorates for the rapidly increased number of Sinhalese settlers. Colonization of the Tamil areas continues today.

Independence was granted to Ceylon in 1948. Under the provisions of the Ceylon Citizenship Act 1948, almost all the Tamils in the Central Hill Country were denied citizenship, leaving them stateless. They were then disenfranchised, resulting in expansion of the already large majority of Sinhalese voters.

Due to political reasons, the Sinhalese leader Bandaranaike converted from Christianity to Buddhism and learnt the Sinhala language. He promised two changes that would attract the support of the Sinhalese Buddhist majority. These were, in 1956, to change the official language from English to Sinhala only, and to make Buddhism the exclusive state religion.

Further erosion of the Tamils' rights took place over the following decades. In education admission was based no longer on merit but on ethnic origin. In 1972, the Sinhalese leadership brought in a republican constitution which abolished the right to appeal to the Privy Council and also abolished Section 29 of the 1946 constitution, ultimately intended to protect numerical minorities. It renamed the island 'Sri Lanka' (a Sinhala name) and, in a clear move away from secularism, proclaimed that 'Sri Lanka shall give to Buddhism the foremost place'. This constitutionally secured the ability of the Buddhist clerics, alongside Sinhalese politicians, to maintain Sinhalese control.

Alongside the non-violent resistance movement in the 1950s and 1960s, and its expressions of civil disobedience protests, Tamil politicians proposed political solutions. However, agreements for peace, based on a quasi-federal system devolving certain powers to the Tamils in the north-eastern province signed between the Sinhalese leaders (prime ministers) and the Tamil leaders (parliamentarians) to resolve the political turmoil in the country (Banda-Chelva Pact 1957 and Senanayake-Chelvanayagam Pact of 1965) were unilaterally abrogated by the Sinhalese prime ministers then in power.

After that some 500 Tamils were killed in political violence and anti-Tamil riots, they had exhausted all possibilities through dialogue before they were driven to exercise their right to self-determination, voting overwhelmingly for external self-determination, in elections in 1977. The government reacted by introducing the Sixth Amendment to the Constitution, prohibiting peaceful advocacy of independence. The constitution itself further denied Tamils an effective role in the decision-making process. This oppressive situation eventually led to violent conflict.

Genocide

Based on historical and socio-political evidence, the Tamils of the north-east fulfil all the criteria to be recognized as a distinct people: not only a culture that possess a native language, but also one that has inhabited a traditional settlement area, has a shared history and has democratically expressed a collective will.

In the early 1980s, the persecution intensified. In 1981 the library in Jaffna was burnt to the ground by Sinhalese policemen. Some 95,000 ancient texts and manuscripts were destroyed. In July 1983, over 3,000 Tamils were killed, many of them burnt alive. Electoral lists were used to identify Tamil homes. The police and army encouraged the killings. The international community recognized this as genocide.

Impunity

More than 90 mass killings of Tamils by the Sri Lankan security forces took place in the north-east between 1956 and 2008. The absence of any effective means of bringing perpetrators to justice, has helped to fuel the conflict. In 1998, the UN Special Rapporteur on Extrajudicial Killings, Bacre Waly Ndiaye, stated,

"Effective impunity encourages political violence and is a serious destabilizing element in all contexts of the Sri Lankan socio-political system … This culture of impunity has led to arbitrary killings and has contributed to the uncontrollable spiralling of violence. (UN Commission on Human Rights 1998, 27, paragraph 119)."

The Prevention of Terrorism Act (PTA) of 1979 still gives unlimited powers to the Sri Lankan security forces to arrest, detain, torture, rape, kill and dispose of the bodies of Tamils with impunity. It allows confessions under torture as admissible evidence in court. Academics, human rights defenders, educationalists, parliamentarians, journalists, business people and others have been killed by security forces with impunity.

Years of conflict and war have imparted a devastating effect on the lives of hundreds of thousands of people. More than a million people were displaced multiple times and living in conditions of extreme poverty. The Sri Lankan army still occupies Tamil people's homes, schools and places of worship, preventing them from returning home.

It is significant that for more than twenty years, negotiations between the two parties at war, the Liberation Tigers of Tamil Eelam and the Sri Lankan government, took place in countries outside Sri Lanka. The international community facilitated talks in Thimpu, Bhutan in 1985; Bangalore, India in 1986; Sattahip and Rose Garden, Thailand, Oslo, Norway and Hakone, Japan in 2002; Berlin, Germany in 2003 and Geneva, Switzerland in 2006. Sri Lanka withdrew from the last peace talks in January 2008.

The number of Tamil civilians killed by government forces prior to 2009 exceeds 100,000. In the last days of the war, the UN records affirm that at least 40,000 more Tamil civilians were killed. Flagrant breaches of international humanitarian law were committed. The atrocities constitute war crimes and crimes against humanity.

In 2011, the UN Panel of Experts appointed by Ban Ki-moon to advise him on accountability in Sri Lanka concluded that "the conduct of the war represented a grave assault on the entire regime of international law to protect individual dignity during both war and peace".

The government denies knowing anything about the thousands of youths and men who surrendered to the security forces in May 2009, Nevertheless the way 11-year-old Balachandran was brutally murdered, gives a clue about the fate of others. It is strongly believed that under direct orders from the Secretary of Defense, they were all summarily executed. Not to speak about sexual abuse and torture and cruel treatments' reports.

An important turning point was resolution A/HRC/22/l.1/Rev.1, which called upon the Government "to conduct an independent and credible investigation into allegations of violations of international human rights law and international humanitarian law.

The UN High Commissioner on Human Rights in her oral update on promoting reconciliation and accountability in Sri Lanka (A/HRC/24/CRP.3/Rev.1) presented to the HRC 24th session in September 2013, identified a number of urgent facts including the pervasive role of the military in all areas of civilian life, the inadequacy of the new commission on disappearances and the degree to which the rule of law is being undermined and eroded. As to freedom of expression, there exists a continuing high levels of harassment and intimidation against human rights defenders, lawyers and journalists, reports that people in places she visited in the Mullaitivu area, were controlled by police or military officers before and after her arrival and in Trincomalee, people were questioned about the content of their conversation. Complaints were also expressed in Trincomalee, Mullaitivu, Jaffna and Kilinochchi about compulsory acquisition of private land used for military installations.

The last event in this respect is the blocking, on February 12th last, of two more Tamil Websites, a further Government crackdown on media freedom, compounded with reports of physical attacks on Tamil journalists and Tamil media offices.

The war ended five years ago, but the attack on Tamil media continues aiming at intimidating and silencing Tamils thus tightening all avenues of free speech ahead of 25th UN Human Rights Council Session, where a Sri Lanka resolution for War Crimes will be debated.

All delegates to the Human Rights Council are urged to grasp and understand the background and root causes of this urgent situation in Sri Lanka and to take decisive action, i.e. by adopting a resolution, in order, to say the least, trying to pay justice to the victims of a wounded people.

An international war crimes investigation is needed to ascertain the responsibility of some 70.000 Tamils killed in the "No-Fire Zones" established by the Sri Lanka Government during the last five months of the war in 2009.